

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

BLACKFEET HOUSING,

Plaintiff,

vs.

UNITED STATES OF AMERICA,
Acting by and through the Bureau of
Indian Affairs,

Defendants.

**CV 13-66-GF-BMM-JTJ
CV 13-79-GF-BMM-JTJ**

**ORDER ADOPTING MAGISTRATE
JUDGE'S FINDINGS AND
RECOMMENDATIONS**

Plaintiff Blackfeet Housing is an entity owned by the Blackfeet Tribe.

Defendant United States of America, through the Bureau of Indian Affairs (BIA),

owns and maintains designated roads on the Blackfeet Indian Reservation.

Blackfeet Housing alleges in Civil Action 13-66-BMM-JTJ (the snow removal case) that it cleared BIA-designated roads when BIA negligently failed to maintain its roads. Blackfeet housing also alleges that BIA breached a fiduciary duty to Blackfeet Housing. Blackfeet Housing alleges in Civil Action 13-79-GF-BMM-JTJ (the storm drain case) that BIA failed to maintain the storm water collection and conveyance system resulting in the flooding of Blackfeet Housing's rental units.

The Court consolidated the cases. The United States of America filed a motion for Summary Judgment (CV 13-66-GF-BMM-JTJ, Doc. 30; CV 13-79-GF-BMM-JTJ, Doc. 29). Blackfeet Housing filed a motion for Partial Summary Judgment (CV 13-66-GF-BMM-JTJ, Doc. 34; CV 13-79-GF-BMM-JTJ, Doc. 33.)

United States Magistrate Judge John Johnston entered Findings and Recommendations in this matter on November 23, 2015. (Doc. 53.) Judge Johnston recommended that the Court grant the United States's Motion for Summary Judgment as to the snow removal case. Judge Johnston also recommended that the Court deny the United States's Motion for Summary Judgment as to the storm drains case. Judge Johnston further recommended that the Court deny Blackfeet Housing's Motion for Partial Summary Judgment.

When a party makes no objections, the Court need not review *de novo* the proposed Findings and Recommendations. *Thomas v. Arn*, 474 U.S. 140, 149-52 (1986). Neither party objected to the Findings and Recommendations in this case. This Court will review Judge Johnston's Findings and Recommendations, however, for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981).

The Court shall grant summary judgment if the movant shows that no genuine issue of material fact exists and that the movant should be entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). Counsel for the United States

conceded, during oral argument on November 17, 2015, that questions of fact existed regarding the storm drain case. Likewise, Counsel for Blackfeet Housing conceded that genuine issues of material fact existed relating to its Motion for Summary Judgment. The Court finds no error in Judge Johnston's recommendations to deny those motions.

The United States, in the snow removal case, argues that sovereign immunity divests the Court of jurisdiction. The United States asserts that BIA's actions fall within the discretionary function exception to the Federal Tort Claims Act. Blackfeet Housing seeks recovery for costs incurred in labor, fuel, and repairs to leased equipment. The FTCA limits the jurisdiction of the Court to claims of "money damages" against the United States "for injury or loss of property. *State of Idaho ex rel. Trombley v. U.S. Dept. of Army, Corps of Engineers*, 666 F.2d 444, 446 at (9th Cir. 1982). The FTCA does not permit a plaintiff to bring an action to recover costs because "no injury or loss of property" exists, as required by the FTCA. Blackfeet Housing alleges no injury to person or property. The Court finds no error in Judge Johnston's Findings and Recommendations, and adopts them in full.

Accordingly, **IT IS SO ORDERED** that:

1. The United States's Motion for Summary Judgment (CV 13-66-GF-BMM-JTJ, Doc. 30; CV 13-78-GF-BMM-JTJ, Doc. 29) is **GRANTED** as to the snow removal case (CV 13-66-GF-BMM-JTJ).
2. The United States's Motion for Summary Judgment (CV 13-66-GF-BMM-JTJ, Doc. 30; CV 13-78-GF-BMM-JTJ, Doc. 29) is **DENIED** as to the storm drain case (13-78-GF-BMM-JTJ).
3. Blackfeet Housing's Motion for Partial Summary Judgment (CV 13-66-GF-BMM-JTJ, Doc. 34; CV 13-78-GF-BMM-JTJ, Doc. 33) is **DENIED**.

DATED this 14th day of December, 2015,



Brian Morris
United States District Court Judge